

REMARKS

Applicants thank the Examiner for the courtesy shown during a telephone call with the undersigned on August 16, 2006 to discuss the instant Restriction Requirement.

Amendments to the Claims

Applicants have canceled, without prejudice, claims 1-50 and 66-80, drawn to nonelected subject matter. Applicants reserve their right to file divisional applications from the instant application.

The Restriction Requirement

Prior to the entry of this Response, claims 1, 2, 5-14, 42, 45-47, and 51-80 were pending and subjected to restriction.

The Office Action contends that the claims are drawn to three patentably distinct inventions as follows:

- | | |
|------------|---|
| Group I: | Claims 1, 2, 5-14, 42, and 45-47, drawn to compositions that are or comprise SEQ ID NO: 99, classified in class 530, subclass 300; |
| Group II: | Claims 6-14, 42, 45-47, and 67-80, drawn to compositions that are or comprise SEQ ID NO: 98, classified in class 530, subclass 300; |
| Group III: | Claims 52-65, drawn to compositions that are or comprise SEQ ID NO: 97, classified in class 530, subclass 300. |

The Office Action has further required Applicants to make a series of species selections following the election of any one of Groups I-III. The Office Action has required the selection of a single (i) peptide sequence from the identified SEQ ID NOS; (ii) species of cargo; and (iii) species of linkage between cargo and peptide.

Applicants note that the Office Action did not list claim 51 as a pending claim. The complete listing of pending claims is as follows: claims 1, 2, 5-14, 42, 45-47, and 51-80. With regards to the Office Action's statement that a required restriction between product and process claims has been made, Applicants note that the claims of Groups I-III are drawn to compositions that are or comprise SEQ ID NOS: 99-97, respectively. The Groups do not

comprise process claims. Applicants therefore request withdrawal of the Consideration of Rejoinder as set forth in the Office Action.

In response, **Applicants elect Group III** (claims 51-65), drawn to compositions that are or comprise SEQ ID NO: 97. This election is made without prejudice to the prosecution of non-elected groups in other patent applications. Applicants have canceled the subject matter of non-elected groups solely to advance prosecution of the claims of the elected group. Applicants thank the Examiner for his guidance in preparing this response to the Restriction Requirement in an August 16, 2006 telephone call.

Applicants further elect **(i) SEQ ID NO: 97; (ii) a therapeutic protein of amino acid sequence KLAKLAK as defined by SEQ ID NO: 22; and (iii) an avidin linkage.**

Applicants hereby traverse in part this Restriction Requirement.

Applicants previously submitted an election of the species of cargo complexed with SEQ ID NOS: 97, 98, or 99 in response to the December 16, 2004 Office Action filed June 16, 2005. In the June 16, 2005 response, Applicants selected "therapeutic proteins" as the species of cargo. As shown in the specification at paragraphs 75, 100, 104 and 203, therapeutic agents may be peptides that induce apoptosis, such as the "death peptide" comprising an anti-microbial peptide which further comprises KLAK repeats (SEQ ID NO: 22), in cancerous tumors. Applicants note that the invention of the instant application is drawn to transport peptides, which can facilitate the uptake of any cargo into a cell, and not to a specific type of cargo. Indeed, the Examiner recognized the invention was the transport peptides of the given SEQ ID NOs, which can transport any cargo linked thereto. In the Final Office Action mailed September 6, 2005, the Examiner allowed claims 51-65, wherein the cargo can be a polynucleotide, a polypeptide, a small molecule, a virus, a modified virus, a viral vector, and a plasmid, *etc.* Applicants thus submit that the species selection of a cargo is improper, and request that it be withdrawn.

Applicants further submit that the species selection of a linkage between the peptide and cargo is improper. As stated above, the patentability of the claimed invention resides in the peptides that can facilitate the uptake of cargo into a cell, not the cargo itself or how the cargo is linked to the peptide. All that is required is some link between the peptide and cargo. Linkages that can be used to complex the peptide to a cargo would be known to those

ordinarily skilled in the art. In fact, the Examiner has examined claims to the linkage between the peptide and cargo of a peptide-cargo complex and found them allowable over the prior art, as evidenced by the Examiner's withdrawal of the rejection to an avidin bridge linkage in the Official Action mailed September 6, 2005. Applicants therefore believe that the species election is improper, and request that the requirement therefor be withdrawn.

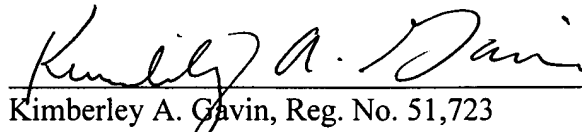
As indicated above, pending claims 51-65, drawn to compositions that are or comprise SEQ ID NO: 97, were, following substantive examination, found allowable by the Examiner in the Office Action mailed September 6, 2005. Consequently, Applicants submit that, upon entry of this response, claims 51-65 will be in condition for allowance. Accordingly, Applicants respectfully request that the claims of Group III (claims 51-65) proceed to allowance, given the finding of allowability in the Office Action mailed September 6, 2005.

Conclusion

Applicants respectfully request entry of the foregoing remarks and seek an allowance of claims 51-65. If there is any outstanding issue or matter that could be clarified by a telephone call, to expedite the issuance of a Notice of Allowance, the Examiner is invited to telephone the undersigned.

In addition to the fees set forth herein, Applicants believe that no additional fee is required. If any additional fee is due, or if any overpayment has been made, in connection with the filing of this response, the Transmittal and Fee Transmittal (submitted herewith in duplicate) authorizes the Director to charge any such fee or credit any overpayment, to our Deposit Account No. 02-4377.

Respectfully submitted,



Kimberley A. Gavin, Reg. No. 51,723
Agent for Applicants

Lisa B. Kole, Reg. No. 35,225
Attorney for Applicants

Baker Botts L.L.P.
Customer No. 21003
30 Rockefeller Plaza
New York, NY 10112-4498
(212) 408-2500